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HOUSE BILL 887

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Al Park

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE  
LIMITATION OF FEES AND REGULATION OF TITLE LOANS; AMENDING AND  
ENACTING CERTAIN PROVISIONS OF THE NEW MEXICO SMALL LOAN ACT OF  
1955.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-15-2 NMSA 1978 (being Laws 1955,  
Chapter 128, Section 2, as amended) is amended to read:

"58-15-2. DEFINITIONS.--The following words and terms  
when used in the New Mexico Small Loan Act of 1955 [~~shall~~] have  
the following meanings unless the context clearly requires a  
different meaning. The meaning ascribed to the singular form  
[~~shall apply~~] applies also to the plural:

[A. "~~person~~" shall include individuals, copartners,  
~~associations, trusts, corporations and any other legal entity;~~]

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1           A. "consumer" means a person who enters into a loan  
2 agreement and receives the loan proceeds in New Mexico;

3           B. "debit authorization" means an authorization  
4 signed by a consumer to transfer or withdraw funds  
5 electronically from the consumer's account for the specific  
6 purpose of repaying a loan;

7           C. "department" or "division" means the financial  
8 institutions division of the regulation and licensing  
9 department;

10          D. "director" means the director of the division;

11          E. "fair market value" means the highest amount of  
12 cash a willing seller would take, and a willing buyer would  
13 offer, for the property if it were offered for sale in the open  
14 market for a reasonable time to find a purchaser that is buying  
15 with knowledge of all the uses to which the property is  
16 suitable or adaptable, with the seller not being required to  
17 sell and the purchaser not being required to purchase the  
18 property;

19          F. "installment loan" means a loan repaid with  
20 interest not to exceed thirty-six percent annual percentage  
21 rate in a minimum of four successive substantially equal  
22 payment amounts to pay off a loan in its entirety with a period  
23 of no less than one hundred twenty days to maturity;

24          [~~B.~~] G. "license" [~~shall mean~~] means a permit  
25 issued under the authority of the New Mexico Small Loan Act of  
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1 1955 to make loans and collect charges [~~therefor~~] strictly in  
2 accordance with the provisions of [~~the New Mexico Small Loan~~  
3 ~~Act of 1955~~] that act at a single place of business. It shall  
4 constitute and shall be construed as a grant of a [~~revokable~~]  
5 revocable privilege only to be held and enjoyed subject to all  
6 the conditions, restrictions and limitations contained in the  
7 New Mexico Small Loan Act of 1955 and lawful regulations  
8 promulgated by the director [~~of the financial institutions~~  
9 ~~division~~] and not otherwise;

10 [G.] H. "licensee" [~~shall mean~~] means a person to  
11 whom one or more licenses have been issued [~~hereunder~~] pursuant  
12 to the New Mexico Small Loan Act of 1955 upon [~~their~~] the  
13 person's written application electing to become a licensee and  
14 consenting to exercise the privilege of a licensee solely in  
15 conformity with the New Mexico Small Loan Act of 1955 and the  
16 lawful regulations promulgated by the director [~~of the~~  
17 ~~financial institutions division hereunder~~] under that act and  
18 whose name [~~or names appear~~] appears on the face of the  
19 license;

20 [~~D.~~ "~~director~~" means the director of the financial  
21 ~~institutions division of the commerce and industry and~~  
22 ~~licensing department;~~

23 ~~E.~~ "~~department~~" means the financial institutions  
24 ~~division of the commerce and industry department;]~~

25 I. "loan property" means the property evidenced by

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1 an unencumbered state-issued certificate of title or  
2 certificate of ownership to personal property, not including a  
3 mobile home, that is deposited with a title lender as a  
4 security for a title loan in the course of the title lender's  
5 business and is the subject of a title loan agreement;

6 J. "payment plan" means an interest-free loan to be  
7 repaid in a minimum of six successive substantially equal  
8 amounts to pay off a loan in its entirety with a period of no  
9 less than one hundred eighty days to maturity;

10 K. "person" includes an individual, copartner,  
11 association, trust, corporation and any other legal entity;

12 L. "simple interest" means a method of calculating  
13 interest in which the amount of interest is calculated based on  
14 the annual interest rate disclosed in the loan agreement and is  
15 computed only on the outstanding principal balance of the loan;

16 M. "title lender" means a person engaged in the  
17 business of making title loan agreements with a consumer;

18 N. "title loan" means a loan transaction secured by  
19 loan property, but does not include credit extended to finance  
20 the purchase of property in which the title lender takes a  
21 security interest; and

22 O. "title loan agreement" means a written agreement  
23 between a consumer and a title lender whereby the title lender  
24 agrees to make a loan of money to a consumer, and the consumer  
25 agrees to give the title lender a security interest in

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1 unencumbered titled personal property owned by the consumer,  
2 but does not include installment loans. The consumer shall  
3 agree to the title lender's keeping possession of the  
4 certificate of title. The consumer shall have the exclusive  
5 right to reclaim the certificate of title by repaying the loan  
6 of money in full. The terms of the written title loan  
7 agreement shall comply with the requirements of the New Mexico  
8 Small Loan Act of 1955."

9 Section 2. A new section of the New Mexico Small Loan Act  
10 of 1955 is enacted to read:

11 "[NEW MATERIAL] LICENSURE OF TITLE LENDERS.--

12 A. It is unlawful for any person to act as a title  
13 lender unless the person has been licensed by the department.

14 B. All title loan agreements entered into by a  
15 licensee that are in violation of the license requirements are  
16 void and the title lender has no right to collect, receive or  
17 retain any principal, interest or charges whatsoever.

18 C. A consumer who enters into a title loan  
19 agreement with a licensee who is in violation of the New Mexico  
20 Small Loan Act of 1955 shall not be bound by the terms of the  
21 title loan agreement, and the consumer's only liability is for  
22 the return of the principal sum borrowed plus interest at the  
23 rate set by statute for interest on judgments."

24 Section 3. A new section of the New Mexico Small Loan Act  
25 of 1955 is enacted to read:

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1           "[NEW MATERIAL] ADDITIONAL QUALIFICATIONS FOR LICENSURE.--

2           In addition to complying with the licensing requirements of  
3           Section 58-15-5 NMSA 1978, supplementary requirements for  
4           licensure of a title lender include:

5                   A. each license shall specify the location of the  
6                   specific title loan office to which it applies and must be  
7                   conspicuously displayed in the title loan office;

8                   B. before a title loan office location may be  
9                   changed or moved by a title lender, the department shall  
10                  approve the change of location by mailing the license for that  
11                  title loan office or mailing the licensee a new license for  
12                  that title loan office;

13                  C. each licensee shall post a consumer protection  
14                  bond in the amount of twenty-five thousand dollars (\$25,000)  
15                  for each title loan office location. The consumer protection  
16                  bond shall continue in effect for two years after the licensee  
17                  ceases operation in New Mexico. The consumer protection bond  
18                  shall be available to pay damages and penalties to consumers  
19                  harmed by a violation of the New Mexico Small Loan Act of 1955;

20                  D. more than one place of business shall not be  
21                  maintained under the same license, but the department may issue  
22                  more than one license to the same licensee if the licensee is  
23                  otherwise qualified; and

24                  E. each licensee shall keep books, accounts and  
25                  records that will enable the department to determine if the

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1 licensee is complying with the provisions of the New Mexico  
2 Small Loan Act of 1955 and shall maintain any other records  
3 required by the department. The department may examine the  
4 records at any reasonable time. The records shall be kept for  
5 two years following the last entry on a title loan and shall be  
6 kept according to generally accepted accounting procedures that  
7 include an examiner being able to review the record keeping and  
8 reconcile each title loan with documentation maintained in the  
9 consumer's title loan file records."

10 Section 4. A new section of the New Mexico Small Loan Act  
11 of 1955 is enacted to read:

12 "[NEW MATERIAL] LICENSURE--CRIMINAL BACKGROUND CHECKS.--

13 The division may require criminal background checks for a new  
14 licensee and may:

15 A. develop rules that require a criminal history  
16 background check of a person licensed;

17 B. require an applicant for licensure to be  
18 fingerprinted;

19 C. promulgate standards for denial for licensure  
20 based on a criminal history involving fraud, dishonesty or acts  
21 of moral turpitude;

22 D. provide for an applicant to inspect or challenge  
23 the validity of the record developed by the background check,  
24 if the applicant is denied a license;

25 E. establish a fee for fingerprinting and

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1 conducting a background check for an applicant that shall be  
2 paid by the applicant; and

3 F. provide fingerprints from an applicant for  
4 submission to the federal bureau of investigation to conduct a  
5 national criminal history background check and to the  
6 department of public safety to conduct a state criminal history  
7 check, provided that:

8 (1) arrest record information received from  
9 the department of public safety and the federal bureau of  
10 investigation shall be privileged and shall not be disclosed to  
11 individuals not directly involved in the decision affecting the  
12 specific applicant; and

13 (2) electronic live fingerprint scans may be  
14 used for conducting a criminal history background check."

15 Section 5. A new section of the New Mexico Small Loan Act  
16 of 1955 is enacted to read:

17 "[NEW MATERIAL] REQUIREMENTS FOR TITLE LOANS.--

18 A. A licensed title lender may engage in the  
19 business of making loans secured by loan property subject to  
20 the provisions of this section.

21 B. Each title loan shall be reduced to writing in a  
22 title loan agreement. Each title loan agreement shall provide  
23 that:

24 (1) the title lender agrees to make a loan of  
25 money to the consumer, and the consumer agrees to give the

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1 title lender a security interest in unencumbered loan property  
2 owned by the borrower;

3 (2) the security interest provided for in  
4 Paragraph (1) of this subsection is not perfected unless it is  
5 filed in accordance with the laws of this state;

6 (3) the consumer consents to the title lender  
7 keeping possession of the certificate of title;

8 (4) each loan has a stated minimum term of at  
9 least thirty days, with the option of one renewal, with any  
10 remaining principal converted lapsing into a fully amortized  
11 payment plan pursuant to Section 10 of this 2007 act;

12 (5) the total finance charge for the loan is  
13 no greater than the permitted charges allowed by the New Mexico  
14 Small Loan Act of 1955;

15 (6) the consumer has the exclusive right to  
16 redeem the certificate of title by repaying the title loan in  
17 full;

18 (7) upon repaying the loan of money in full,  
19 the title lender shall release its security interest in the  
20 title loan within three business days and return the  
21 certificate of title to the consumer; and

22 (8) an assignee shall be obligated to the  
23 terms of the original contract and all of its rights and  
24 liabilities.

25 C. A title loan shall not exceed the lesser of

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1 fifty percent of the fair market value of the loan property or  
2 two thousand five hundred dollars (\$2,500). For the purpose of  
3 this subsection, the fair market value shall be determined by a  
4 nationally recognized general index approved by the department.

5 D. A title loan agreement and an agreement to renew  
6 a title loan shall include a provision granting the consumer  
7 the right to rescind the transaction by returning in cash, or  
8 through certified funds, one hundred percent of the amount  
9 advanced by a licensee for a title loan or renewed title loan  
10 no later than 5:00 p.m. on the first day of business conducted  
11 by the licensee following the execution of the title loan or  
12 renewed title loan agreement. If a consumer exercises the  
13 right of rescission pursuant to this subsection, no fee for the  
14 rescinded transaction shall be charged to the consumer and the  
15 licensee shall not charge or impose on the consumer a fee for  
16 exercising the right of rescission pursuant to this subsection.  
17 If this subsection is applicable, any fee collected by a  
18 licensee shall be returned in full to the consumer.

19 E. Any title loan made within seven days of the  
20 maturity date of a prior title loan or renewed title loan, by  
21 the same licensee, shall automatically be treated as either:

22 (1) a renewed title loan if the title loan has  
23 not been previously renewed; or

24 (2) a payment plan pursuant to Section  
25 10 of this 2007 act if the title loan has been renewed.

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1 F. A consumer may make payments in any amount on a  
2 title loan at any time before maturity without additional fees.  
3 A payment received by a licensee shall first be applied to  
4 administrative fees owed, with any remaining amount to be  
5 applied to principal.

6 G. After each payment is made, in full or in part,  
7 on a title loan, the licensee shall give to the person making  
8 the payment a signed, dated receipt showing the amount paid,  
9 the amount credited toward administrative fees and principal  
10 and the balance due on the loan.

11 H. Prior to the consummation of a title loan, the  
12 licensee shall provide the consumer with copies of the title  
13 loan agreement in English, Spanish or other language as  
14 determined by the director. Consumers may decide which  
15 language version of the agreement they wish to receive.

16 I. A title loan agreement shall not be renewed or  
17 extended without the prior written consent of the consumer.

18 J. Licensees making title loans shall provide the  
19 consumer with an information brochure in English, Spanish or  
20 other language as determined by the director. Consumers may  
21 decide which language version of the brochure they wish to  
22 receive.

23 K. The disclosure of the credit terms of a title  
24 loan shall be according to and governed by the requirements of  
25 12 CFR 226, known as "Regulation Z". The definitions and

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1 requirements of that regulation and commentary shall apply to  
2 title loans as if those provisions are fully set out in this  
3 section.

4 L. A licensee shall collect on a title loan in  
5 default in a professional, fair and lawful manner. A licensee  
6 that complies with the requirements and prohibitions set forth  
7 in 15 U.S.C. 1692c-1692f of the federal Fair Debt Collection  
8 Practices Act shall be deemed to have operated in a  
9 professional, fair and lawful manner."

10 Section 6. A new section of the New Mexico Small Loan Act  
11 of 1955 is enacted to read:

12 "[NEW MATERIAL] TITLE LOANS--PERMITTED CHARGES.--The  
13 following provisions apply only to title loans:

14 A. a licensee shall not charge or receive from a  
15 consumer, directly or indirectly, fees or charges except as  
16 provided in this section;

17 B. upon the execution of a new title loan, the  
18 licensee may impose an administrative fee of not more than  
19 fifteen dollars fifty cents (\$15.50) per one hundred dollars  
20 (\$100) of principal, which fee is fully earned and  
21 nonrefundable at the time a title loan agreement is executed  
22 and payable in full at the end of the term of the title loan or  
23 upon prepayment of the title loan unless a title loan is  
24 rescinded pursuant to Subsection D of Section 5 of this 2007  
25 act;

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1 C. upon the execution of an agreement to renew a  
2 title loan, the licensee may impose an administrative fee of  
3 fifteen dollars fifty cents (\$15.50) per one hundred dollars  
4 (\$100) of principal, which fee is fully earned and  
5 nonrefundable at the time a renewed title loan agreement is  
6 executed and payable in full at the end of the term of the  
7 renewed title loan or upon prepayment of a renewed title loan  
8 unless a renewed title loan is rescinded pursuant to Subsection  
9 D of Section 5 of this 2007 act;

10 D. a licensee shall not charge a consumer interest  
11 on the outstanding principal owed on a title loan; and

12 E. if there are insufficient funds to pay a check  
13 or other type of debit on the date of presentment by the  
14 licensee, a licensee may charge a consumer a fee not to exceed  
15 fifteen dollars (\$15.00). Only one fee may be collected by a  
16 licensee on a check or debit authorization. A check or debit  
17 authorization request shall not be presented to a financial  
18 institution by a licensee for payment more than one time unless  
19 the consumer agrees in writing, after a check or other type of  
20 debit has been dishonored, to one additional presentment or  
21 deposit."

22 Section 7. A new section of the New Mexico Small Loan Act  
23 of 1955 is enacted to read:

24 "[NEW MATERIAL] TITLE LOAN DEFAULT--REPOSSESSION AND SALE  
25 OF LOAN PROPERTY.--

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- 1           A. A title loan may be considered in default:
- 2                 (1) if the consumer does not renew the title
- 3 loan within seven days of the maturity date on the original
- 4 title loan;
- 5                 (2) if the consumer does not elect to enter a
- 6 payment plan within seven days of the maturity date on the
- 7 renewed title loan;
- 8                 (3) upon the third missed payment of a payment
- 9 plan; or
- 10                (4) upon the failure of the consumer to pay in
- 11 full and reclaim title to the loan property within two months
- 12 after the final payment plan has matured.
- 13           B. Upon default of a title loan, a consumer shall
- 14 deliver the loan property to the title lender at the location
- 15 specified by the loan agreement.
- 16           C. If a consumer fails to deliver the title loan
- 17 property to the title lender within three business days, the
- 18 title lender may take possession of the loan property.
- 19           D. A title lender may take possession of the loan
- 20 property only through an agent that is licensed by the state to
- 21 repossess.
- 22           E. Prior to engaging a repossession agent, the
- 23 title lender shall afford the consumer an opportunity to make
- 24 the loan property available to the title lender at a place,
- 25 date and time reasonably convenient to the title lender and the

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1 consumer. Prior to taking possession of the title loan  
2 property, the title lender shall afford the consumer a  
3 reasonable opportunity to remove from the loan property any  
4 personal belongings without charge or additional cost to the  
5 consumer.

6 F. Upon taking possession of the loan property, the  
7 title lender may dispose of the loan property by sale through a  
8 licensed dealer. At least ten days prior to the sale, the  
9 title lender shall notify the consumer of the date, time and  
10 place of the sale and provide the consumer with a written  
11 account of the principal amount due on the title loan, fees  
12 accrued through the date the title lender takes possession of  
13 the loan property and any reasonable expenses incurred to date  
14 by the title lender in taking possession of, preparing for sale  
15 and selling the loan property. At any time prior to the sale,  
16 the title lender shall permit the consumer to redeem the loan  
17 property by tendering cash, a money order or certified check  
18 for the amount outstanding. Nothing in the New Mexico Small  
19 Loan Act of 1955 precludes a consumer from purchasing the title  
20 loan property at a sale.

21 G. Within thirty days after the sale of title loan  
22 property, the consumer is entitled to receive all proceeds from  
23 the sale of the loan property in excess of the principal amount  
24 and fees due on the title loan and the reasonable expenses  
25 incurred by the title lender in taking possession of, preparing

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1 for sale and selling the loan property. The consumer is  
2 entitled to reasonable attorney fees and costs incurred in an  
3 action brought to recover the proceeds that result in the title  
4 lender being ordered to return all or part of the amount.

5 H. The consumer is responsible for any reasonable  
6 repossession and sales fees, and this amount shall be deducted  
7 from the sale proceeds of the loan property.

8 I. In taking possession and disposing of title loan  
9 property by sale or otherwise, the title lender shall at all  
10 times proceed in a commercially reasonable manner. The sale of  
11 the loan property shall be at or above fair market value. At  
12 least ten days before the sale of the loan property, the title  
13 lender shall publish notice of the date, time and place of the  
14 sale. Before the sale of the loan property is final, the title  
15 lender shall obtain three independent bids to ensure that the  
16 standard for sale at fair market value is satisfied.

17 J. A consumer who does not reclaim a certificate of  
18 title is not personally liable to the title lender to repay  
19 principal, reasonable fees or expenses incurred in connection  
20 with the title loan, and the title lender shall look solely to  
21 the title loan property for satisfaction of the amount owed  
22 under the title loan agreement.

23 K. A consumer who obtains a title loan from a title  
24 lender under false pretenses by hiding or not disclosing the  
25 existence of a valid prior lien or security interest affecting

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1 the title loan property is personally liable to the title  
2 lender for the full amount stated in the title loan agreement,  
3 including expenses incurred by the title lender in connection  
4 with the loan."

5 Section 8. A new section of the New Mexico Small Loan Act  
6 of 1955 is enacted to read:

7 "[NEW MATERIAL] TITLE LOAN PRODUCTS--PROHIBITED ACTS.--A  
8 licensee shall not:

9 A. enter into a title loan agreement with a person  
10 under the age of eighteen years;

11 B. threaten or intimidate a consumer or threaten to  
12 use or request the use of criminal process in this or another  
13 state to collect on a title loan;

14 C. use a device or agreement that would have the  
15 effect of charging or collecting more fees, charges or interest  
16 than that allowed by law by entering into a different type of  
17 transaction with the consumer that has that effect;

18 D. sell or otherwise charge for any type of  
19 insurance in connection with a title loan agreement;

20 E. charge a prepayment penalty;

21 F. charge a fee to cash a check representing the  
22 proceeds of a title loan;

23 G. charge a late fee or delinquency charge if a  
24 consumer fails to repay a title loan on time;

25 H. fail to exercise reasonable care in the

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1 safekeeping of loan property;

2 I. refuse to accept partial payments toward  
3 satisfying an obligation owed under a title loan agreement or  
4 an extension of such an agreement;

5 J. assign or attempt to assign a consumer's  
6 personal check to a third party unless for collection purposes;

7 K. accept collateral for a title loan other than  
8 the loan property that is the subject of the title provided as  
9 the initial collateral for that title loan or require a  
10 consumer to provide a guaranty from another person for a title  
11 loan;

12 L. include any of the following provisions in a  
13 title loan agreement:

14 (1) a hold harmless clause;

15 (2) a confession of judgment clause or power  
16 of attorney;

17 (3) an assignment of or order for payment of  
18 wages or other compensation for services;

19 (4) a waiver of claims for punitive damages;

20 (5) a provision in which the consumer agrees  
21 not to assert a claim or defense arising out of the contract;

22 (6) a waiver of a provision of the New Mexico  
23 Small Loan Act of 1955;

24 (7) a waiver of the right to renew a title  
25 loan or enter into a payment plan pursuant to Section 10 of

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1 this 2007 act; or

2 (8) a waiver of any right secured by New  
3 Mexico law;

4 M. make a title loan contingent on the purchase of  
5 insurance or other goods or services;

6 N. take a check, instrument or form in which blanks  
7 are left to be filled in after execution of the check,  
8 instrument or form;

9 O. offer, arrange, act as an agent for or assist a  
10 third party in any way in the making of a title loan unless the  
11 third party complies with all applicable federal and state laws  
12 and regulations;

13 P. knowingly enter into a title loan with a  
14 consumer who lacks the capacity to consent;

15 Q. own or operate an auto dealership or pawnshop;

16 R. use an agency agreement or partnership agreement  
17 as a scheme or contrivance to circumvent the application of the  
18 provisions of the New Mexico Small Loan Act of 1955 to a  
19 consumer's title loan. For the purposes of this subsection:

20 (1) "agency agreement" means an agreement  
21 between in-state entities and a banking corporation, savings  
22 and loan association or credit union operating under the laws  
23 of the United States or of any state whereby the in-state agent  
24 holds a predominant economic interest in the revenues generated  
25 by a title loan or renewed title loan made to New Mexico

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1 residents; and

2 (2) "partnership agreement" means an agreement  
3 between in-state entities and a banking corporation, savings  
4 and loan association or credit union operating under the laws  
5 of the United States or of any state whereby the in-state  
6 partner holds a predominant economic interest in the revenues  
7 generated by a title loan or renewed title loan made to New  
8 Mexico residents;

9 S. advertise using the words "interest-free loans"  
10 or "no finance charge"; or

11 T. enter into a transaction contrary to this  
12 section."

13 Section 9. A new section of the New Mexico Small Loan Act  
14 of 1955 is enacted to read:

15 "[NEW MATERIAL] RENEWED TITLE LOANS.--A consumer may renew  
16 a title loan one time at the discretion of the consumer for a  
17 term no less than thirty days and subject to fees pursuant to  
18 Section 6 of this 2007 act. To be eligible to renew a title  
19 loan, a consumer shall first pay the administrative fee for the  
20 original title loan pursuant to Section 6 of this 2007 act."

21 Section 10. A new section of the New Mexico Small Loan  
22 Act of 1955 is enacted to read:

23 "[NEW MATERIAL] TITLE LOANS--PAYMENT PLANS.--

24 A. During the term of a title loan that has been  
25 renewed, if the renewed title loan has not been repaid in full,

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1 the licensee shall offer the consumer the opportunity to enter  
2 into a payment plan. The consumer may elect, and a licensee  
3 shall permit, entry into a payment plan for the unpaid balance  
4 of the renewed title loan. To be eligible to enter into a  
5 payment plan, a consumer shall first pay the administrative fee  
6 for the renewed title loan pursuant to Section 6 of this 2007  
7 act.

8 B. The title lender shall provide written notice by  
9 mail to the consumer of the option to enter into a payment plan  
10 at least seven days before the renewed title loan's maturity  
11 date.

12 C. No fees, charges or interest may be charged for  
13 a payment plan.

14 D. A payment plan shall provide for:

15 (1) a minimum of one hundred eighty days for  
16 the repayment of the unpaid principal balance of a renewed  
17 title loan; and

18 (2) substantially equal monthly payments to  
19 pay off the title loan in its entirety."

20 Section 11. A new section of the New Mexico Small Loan  
21 Act of 1955 is enacted to read:

22 "[NEW MATERIAL] REQUIRED DISCLOSURES WHEN MAKING TITLE  
23 LOANS.--A licensee making title loans or renewed title loans  
24 shall provide a notice immediately above the consumer's  
25 signature on each title loan agreement or renewed title loan

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1 agreement in at least twelve-point bold type using the  
2 following language:

3 "(1) A title loan is not intended to meet long-term  
4 financial needs.

5 (2) You should use a title loan only to meet short-  
6 term cash needs.

7 (3) You will be required to pay additional  
8 administrative fees if you renew the title loan rather than pay  
9 the debt in full when due.

10 (4) A title loan is a high-cost loan. You should  
11 consider what other lower-cost loans are available to you.

12 (5) You have the right to renew your title loan one  
13 time at your discretion. If you renew a title loan and cannot  
14 fully repay that loan when due, you have a right to enter into  
15 a payment plan requiring payment within a minimum of one  
16 hundred eighty days, in relatively equal monthly parts. If you  
17 enter into a payment plan, you will not have to pay an  
18 additional administrative fee or interest on the outstanding  
19 principal balance."."

20 Section 12. A new section of the New Mexico Small Loan  
21 Act of 1955 is enacted to read:

22 "[NEW MATERIAL] TITLE LOANS--VERIFICATION.--

23 A. Before entering into a title loan agreement with  
24 a consumer, a licensee shall use a commercially reasonable  
25 method of verification to verify that the proposed loan

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1 agreement is permissible under the provisions of the New Mexico  
2 Small Loan Act of 1955.

3 B. No later than October 1, 2007, the division  
4 shall certify that one or more consumer reporting service  
5 databases are commercially reasonable methods of verification.  
6 Upon certifying that a consumer reporting service database is a  
7 commercially reasonable method of verification, the division  
8 shall:

9 (1) provide reasonable notice to all licensees  
10 identifying the commercially reasonable methods of verification  
11 that are available; and

12 (2) upon certification, require each licensee  
13 to use a commercially reasonable method of verification as a  
14 means of complying with Subsection A of this section.

15 C. Except as otherwise provided in this section,  
16 all personally identifiable information regarding a consumer  
17 obtained by way of the certified database and maintained by the  
18 division is strictly confidential and shall be exempt from  
19 disclosure under the Inspection of Public Records Act.

20 D. Notwithstanding any other provision of law to  
21 the contrary, a consumer seeking a title loan may make a direct  
22 inquiry to the consumer reporting service to request a more  
23 detailed explanation of the basis for a consumer reporting  
24 service's determination that the consumer is ineligible for a  
25 new title loan.

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1           E. In certifying a commercially reasonable method  
2 of verification, the division shall ensure that the certified  
3 database:

4                   (1) provides real-time access through an  
5 internet connection or, if real-time access through an internet  
6 connection becomes unavailable to lenders due to a consumer  
7 reporting service's technical problems incurred by the consumer  
8 reporting service, through alternative verification mechanisms,  
9 including verification by telephone;

10                   (2) is accessible to the division and to  
11 licensees in order to ensure compliance with the New Mexico  
12 Small Loan Act of 1955 and in order to provide any other  
13 information the division deems necessary;

14                   (3) requires licensees to enter whatever  
15 information is required by the division;

16                   (4) maintains a real-time copy of the required  
17 reporting information that is available to the division at all  
18 times and that is the property of the division;

19                   (5) provides licensees with no more than a  
20 statement that a consumer is eligible or ineligible for a new  
21 title loan and a description of the reason for the  
22 determination; and

23                   (6) contains safeguards to ensure that all  
24 information contained in the database regarding consumers is  
25 kept strictly confidential.

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1 F. A licensee shall update the certified database  
2 by entering all information required under Paragraph (3) of  
3 Subsection E of this section at the time that:

4 (1) a title loan is made;  
5 (2) a title loan is renewed;  
6 (3) a consumer elects to enter into a payment  
7 plan;

8 (4) a consumer's title loan is paid in full;  
9 or

10 (5) a licensee determines that a title loan or  
11 payment plan is in default.

12 G. A licensee may rely on the information contained  
13 in the certified database as accurate and is not subject to any  
14 penalty or liability as a result of relying on inaccurate  
15 information contained in the database.

16 H. A certified consumer reporting service shall  
17 indemnify the licensee against all claims and actions arising  
18 from illegal or willful or wanton acts on the part of the  
19 certified consumer reporting service.

20 I. The director shall promulgate rules necessary to  
21 implement the requirements of the New Mexico Small Loan Act of  
22 1955 regarding the establishment of certified consumer  
23 reporting services."

24 Section 13. A new section of the New Mexico Small Loan  
25 Act of 1955 is enacted to read:

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1           "[NEW MATERIAL] DUTIES OF DIVISION.--

2           A. The division shall:

3                   (1) maintain a list of licensees that is  
4 available to the general public; and

5                   (2) establish a complaint process whereby an  
6 aggrieved consumer or other person may file a complaint against  
7 a licensee or an unlicensed person that violates a provision of  
8 the New Mexico Small Loan Act of 1955.

9           B. The division may:

10                   (1) hold hearings, make findings of fact or  
11 conclusions of law;

12                   (2) issue cease and desist orders;

13                   (3) refer the matter to the appropriate law  
14 enforcement agency for the prosecution for a violation; or

15                   (4) seek injunctive or other relief in  
16 district court or revoke or suspend a license granted under the  
17 New Mexico Small Loan Act of 1955.

18           C. The division shall compile a report for the  
19 legislature on October 1 of each year detailing title loan  
20 statistics, including data adequate to obtain an accurate  
21 understanding of the practices, demographics and legal  
22 compliance of all licensees licensed in the state. Annual  
23 reports shall be made available to interested parties and the  
24 general public. Consistent with state law, the report shall  
25 include, at a minimum, nonidentifying consumer data from the

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1 calendar year ending December 31 of the previous year,  
2 including:

3 (1) the total number and dollar amount of  
4 title loans, renewed title loans and payment plans entered into  
5 by consumers;

6 (2) the total number and dollar amount of  
7 title loans, renewed title loans and payment plans outstanding;

8 (3) the average number of days of a title  
9 loan, including statistics detailing the percentage of  
10 consumers who elect to renew a title loan or enter into an  
11 payment plan;

12 (4) the number of title loans in default, the  
13 number of repossessions by title lenders for default and the  
14 average amount of the title loans in default or title loans  
15 satisfied by repossession;

16 (5) the total dollar amount of the net write-  
17 offs and the net recoveries of a licensee;

18 (6) the minimum, maximum and average dollar  
19 amounts of title loans, renewed title loans and payment plans  
20 entered into by consumers;

21 (7) the average number of transactions and  
22 average aggregate title loan amount entered into per consumer  
23 each year;

24 (8) the number of consumers in default who  
25 deliver the loan property to the title lender within three

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1 business days;

2 (9) the number of consumers in default who  
3 redeem the loan property after it has been repossessed but  
4 before the sale of the loan property; and

5 (10) the average amount of time for a title  
6 lender to return the certificate of title to a consumer who has  
7 paid the loan in full.

8 Section 14. SEVERABILITY.--If any part or application of  
9 this act is held invalid, the remainder or its application to  
10 other situations or persons shall not be affected.

11 Section 15. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is November 1, 2007.